82-1132
No. 82-____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JOSE SALDANA,

Petitioner,

—v.—

ANTONIO GARZA and RICARDO OLVERA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Questions Presented for Review

1. May the traditional common law defense of good faith and probable cause to an unlawful arrest recognized by this Court in Pierson v. Ray be expanded to arrests on less than probable cause?

2. May the persuasion burden on the issues raised by an assertion of a good faith defense to an action for damages for unlawful arrest be imposed on the plaintiff?

3. Are police officers who have effected an unlawful arrest on less than probable cause entitled to a qualified immunity from suit, or, merely, a good faith defense?

4. Should municipalities be liable for damages caused by the unconstitutional acts of their agents who are shielded from personal liability by a qualified immunity or a good faith defense?

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MISCELLANEOUS

The Parties

The parties to this proceeding are listed in the caption.

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported at 684 F.2d 1159 (5th Cir. 1982) and is set forth in petitioner's appendix at pp. A-2 through A-32. The order of the District Court, dated Feb. 10, 1981, dismissing petitioner's complaint and the order of the Fifth Circuit, dated October 6, 1982, denying rehearing en banc are unreported and are set forth in petitioner's appendix at pp. A-1 and A-33, respectively.

JURISDICTION

Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1) to review an order of the Court of Appeals entered October 6, 1982, which denied rehearing of a decision and order entered on September 7, 1982.

STATUTES INVOLVED

42 United States Code § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ....

Texas Penal Code:

Sec. 42.01 Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

(1) Uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

Sec. 42.08 Public Intoxication

(a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

STATEMENT OF THE CASE

On Sunday, February 15, 1976, at approximately 10:00 p.m. petitioner, Jose Saldana, his father, and his future brother-in-law, Fernando Lopez, were listening to music in the front yard of Saldana's home in McAllen, Texas, when respondent, Antonio Garza (a seven-year veteran of the McAllen police force), approached and ordered them to lower the volume of their radio.[1] [Tr. p.237, lines 12-14]. Officer Garza conceded at trial that he had not received a single complaint concerning the radio and conceded that he did not believe that any law was being violated. [Tr. p.159, lines 20-22; p.167, lines 14-20]. Nevertheless, he testified that he "just felt like telling

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1. Citations [Tr. ___] are to the transcript of proceedings in the trial court.

them to" lower the music "because it was a little bit too loud". [Tr. p.160, lines 12-18; p. 166, lines 17-18; and p.237]. Petitioner's brother-in-law complied with Officer Garza's demand.[2] [Tr. pp.25-26; 78] A dispute arose, however, between petitioner and respondent over the propriety of respondent's conduct. Petitioner complained that respondent had no right to bother him in his own home. Respondent told petitioner to settle down or be arrested. When petitioner responded, "This is my goddamn property", Officer Garza arrested him for disorderly conduct by

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2. The radio was located in Fernando Lopez' automobile. Unfortunately, the Fifth Circuit below appears to have misread the record, suggesting that petitioner declined to comply with respondent's demand to lower the radio's volume. 684 F.2d at 1161. No suggestion has ever been made that petitioner refused to comply with Officer Garza's request to turn down the volume.

the use of abusive language[3] [Tr. p.189, lines 1-3], and subsequently charged him with public intoxication as well.

Officer Garza, an experienced police officer, conceded that he was aware that the abusive language ordinance pursuant to which he arrested petitioner required a danger of an immediate breach of the peace. Tex. Pen. Code, 42.01(a)(1). Respondents conceded that neither police officer felt provoked by petitioner's language and that no imminent breach of the peace was threatened by it. [Tr. pp.196-198 and 303-304]. Despite the obvious lack of probable cause to believe that the abusive language ordinance had been violated, respondents nevertheless arrested petitioner for alleged abusive language.

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3. Officer Garza's partner, Ricardo Olvera, a respondent herein, testified that petitioner
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In addition, respondents charged petitioner with public intoxication, despite the fact that the incident took place in petitioner's own front yard.[4] [Tr. pp. 241, lines 5-8] According to Officer Garza, he arrested petitioner for public intoxication because he appeared drunk and had been drinking beer, although Officer Garza conceded that

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also stated:

> "You damn so and so's or SOB's, why are you bothering poor people?" [Court translation].

Olvera would have translated petitioner's statement as follows:

> "You dogs, the only reason you are here is to take money away from poor people" or "You stingy dogs". [Tr. 293, lines 3-4, 8-10].

Olvera did not mention the additional statements in his arrest report, which referred solely to petitioner's "goddamn property" statement. [Tr. p.304-306; 311, 312].

4. A dispute exists over whether the incident took place well inside petitioner's front yard or on the border
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petitioner's anger resulted from the police intrusion rather than from intoxication. [Tr. p. 177, lines 16-25]. Officer Garza conceded that petitioner was neither about to buy more beer nor about to fall down. [Tr. p.189 lines 2-12; p.185, line 6; p.186, line 15]. Significantly, Officer Garza never subjected petitioner to any sobriety test before or after arrest. [Tr. pp. 169-170; 171, lines 15-17; p.249, lines 15-18]. Thus, as with the arrest for abusive language, the arrest for public intoxication appears to have lacked probable cause and been triggered, not

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between his front yard and the eight-foot shoulder which separates petitioner's front yard from the street. Texas law requires that a public intoxication offense take place "in a public place". Tex. Pen. Code § 42.08

by legitimate law enforcement concerns, but by petitioner's challenge to respondent's authority. Petitioner was subsequently acquitted of all charges. [Tr. pp.88-90, 147].

Shortly after his arrest, petitioner along with other named plaintiffs, commenced a class action pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) alleging that named members of the McAllen police department had engaged in a pattern and practice of police abuse. Guadalupe Cano. et al. v. Jesse Colbath, et al. C.A. No. 76-B-52 (S.D. Tex., Brownsville Div.). In 1980, the District Court severed the individual damage claims from the class claims. The class claims were ultimately resolved pursuant to a settlement entered March 17, 1981.[5]

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5. The class action defendants have unsuccessfully asserted that the class action precludes individual damage claims.

At the close of evidence, petitioner requested a directed verdict on the ground that, as a matter of law, no probable cause existed to have arrested him for abusive language or public intoxication and that respondents had not established a triable issue of fact on the existence of a good faith defense. The District Court ruled that insufficient evidence of respondent Olvera's participation in the arrest existed to warrant submission to the jury[6], which returned a verdict for respondent Garza.

On appeal, a panel of the Fifth Circuit affirmed, holding that its prior decisions, when coupled with the reasoning of this Court's decision in Harlow v.

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6. Respondent Olvera's participation consisted chiefly of physically restraining petitioner while respondent Garza effected the arrest. [Tr. pp.245 and 296, lines 8-10].

Fitzgerald, ___U.S.___, 73 L.Ed. 2d 396 (1982), imposed the persuasion burden on the existence of a good faith defense to a § 1983 action for arrest without probable cause on the victim of the arrest rather than on the arresting officer.[7] Saldana v. Garza, 684 F.2d 1159 (5th Cir. 1982). This Court has twice reserved the issue of the allocation of the persuasion burden on the good faith defense to a § 1983 action. Gomez v. Toledo, 446 U.S. 635, 642 (1980) (Rehnquist, J., concurring); Harlow v. Fitzgerald, ___U.S.___, 73 L.Ed. 2d 396, 408 n.24 (1982). To the extent that this Court has spoken on the issue, it has implied that the persuasion burden rests with the defendant Dennis v. Sparks, 449 U.S. 24, 29 (1980).

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7. The Fifth Circuit noted that the arrest at issue herein might well have lacked any vestige of probable cause. However, given the allocation of the persuasion burden to plaintiff on the existence of a good faith defense, the jury's verdict exonerating respondent was affirmed. If, on
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After a timely petition for rehearing en banc was denied on October 6, 1982, (a copy of the order denying rehearing en banc is reproduced in the appendix at A-33) this petition for a writ of certiorari was filed.

REASONS FOR GRANTING THE WRIT

The task of assuring that police officials do not abuse the monopoly of force bestowed upon them by the community, while simultaneously encouraging legitimate and effective law enforcement, is among the most difficult -- and most important -- challenges confronted by a free society. The delicate mechanism which we have evolved requires a police official to demonstrate the existence of probable cause to believe an offense has been committed before invoking the power of arrest. Ordinarily, the decision as to whether probable cause to arrest exists is vested, not in

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the other hand, respondent bears the persuasion burden on the issue of a good faith defense, a new trial must be held. 684 F. 2d at 1162, 1164-1165 and 1166.

the police, but in an independent magistrate who must issue an arrest warrant. Where, however, an offense is committed in the presence of a police officer and it is impracticable to seek a warrant, common sense dictates that the police officer be vested with responsibility to determine for him or herself whether probable cause to arrest exists. When a police officer, vested with such discretion, effects a warrantless arrest without probable cause, he or she violates fundamental constitutional protections, giving rise to an action for damages under Bivens v. Six Unknown Agents, 403 U.S. 388 (1971) and 42 U.S.C. § 1983. See also Monroe v. Pape, 365 U.S. 167 (1961); Pierson v. Ray, 386 U.S. 547 (1967); Reeves v. City of Jackson, 608 F.2d 644, 650-51 (5th Cir. 1979).

This Court has recognized that police officers might be reluctant to engage in legitimate law enforcement activity if they were absolutely liable for guessing wrong as to whether an individual to be arrested was guilty of a crime. Accordingly in Pierson v. Ray, 386 U.S. 547 (1967), the Court recognized the persistence under § 1983 of the common law "defense of good faith and probable cause," 386 U.S. at 557 (emphasis added), which exonerates police for effecting an arrest made in good faith and with probable cause. The first issue in this case is whether the Fifth Circuit erred in departing from both the clear language and holding in Pierson and the common law rule implicitly adopted by the Congress which enacted § 1983, when it ruled that police officers could establish a good faith defense even absent probable cause.

If the Court agrees with the Fifth Circuit and expands the good faith defense beyond Pierson and the traditional common law rule to encompass arrests on less than probable cause, then the case presents a second significant issue: Who has the burden of persuasion on the issues posed by assertion of the good faith defense once a defendant satisfies the burden of pleading the defense imposed by Gomez v. Toledo?

I. THE PANEL'S EXPANSION OF THE GOOD FAITH DEFENSE TO APPLY EVEN WHERE POLICE DEFENDANTS LACKED PROBABLE CAUSE CONFLICTS WITH PIERSON V. RAY

A writ of certiorari is necessary, first, to cabin the Fifth Circuit's drastic expansion of the common law defense of "good faith and probable cause" defined in Pierson v. Ray into a new defense of "good faith or probable cause."

The scope of the defense outlined in Pierson could hardly be clearer: the Court repeatedly used the phrase "good faith and probable cause", see, e.g., 386 U.S. at 555, 556, 557. When it explained the defense in Scheuer v. Rhodes, and afforded high-ranking executive officers a substantially broader protection by way of qualified immunity (see Point IIIB, infra), the Court stressed:

> When a court evaluates police conduct relating to an arrest its guideline is "good faith and probable cause." Ibid

416 U.S. at 245-46, citing Pierson v. Ray. The Court has never, so far as we are aware, referred to an alternative defense of good faith or probable cause.

Although the court below, and some other lower courts, have misread Pierson and Scheuer and exonerated police defendants in § 1983 Fourth Amendment actions even when they lacked probable cause,[9/] the reasoning of Pierson makes clear that the defense outlined in Pierson generally requires probable cause.[10/] The

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9/ See, e.g., Bivens v. Six Unknown Agents, 456 F.2d 1339, 1347-48 (2nd Cir. 1972), on remand from 403 U.S. 388 (1971). Most of the errors in understanding the Pierson good-faith defense stem from the Second Circuit's erroneous interpretation in Bivens.

10/ The Pierson Court noted that the defense was probably available also where a police officer acted "under a statute that he reasonably believed to be valid but that was later held to be unconstitutional ... " 386 U.S. at 555. Under more recent authority, no liability in that case would exist not because of any defense, (footnote continued on following page)

Court did not purport to be creating any new defense out of whole cloth, and such an attempt would have been inconsistent with its duty to enforce § 1983 as enacted by Congress. Accordingly, the "good faith and probable cause" defense was held to be simply the defense as it existed at common law, which Congress was held not to have "abolished" when it enacted § 1983. 386 U.S. at 554. As all of the authorities relied on in Pierson to define the scope of the common law defense make clear, probable cause was an indispensible requirement to establishing the defense. See, e.g., Missouri v. Fidelity & Deposit Co., 179 F.2d 327, 330-32 (8th Cir. 1950), cited at 386 U.S. at 295. Indeed, that had been the common law rule dating back to Entick v. Carrington, where

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but because probable cause would be said to exist. Michigan v. DeFillippo, 443 U.S. 31 (1979).

an award of £ 300 was upheld by Lord Camden because there had been no probable cause for the general search undertaken.[11/]

Affording the defense, as the Fifth Circuit has, even where probable cause is absent is not necessary to further the purposes of the defense. As Circuit Judge Jon O. Newman has noted in a penetrating analysis, when Fourth Amendment violations are at issue, police already have the benefit of an objective reasonableness standard: they cannot be liable in any event unless their actions were unreasonable. See Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct, 87 Yale L.J. 447, 460 (1978). It makes no sense to ask whether an officer could reasonably believe that his action

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11/ See Lasson, The History and Development of the Fourth Amendment to the United States Constitution, at 47-48 (1937 ed.)

was reasonable, when in fact it was objectively unreasonable. Accordingly, as Judge Newman observed, probable cause is an indispensible element in the good faith defense, and courts which have misread Pierson to eliminate that requirement are in error. Id.

II. THE ATTEMPT BY THE PANEL BELOW TO SHIFT THE PERSUASION BURDEN TO THE PLAINTIFF ON THE GOOD FAITH DEFENSE CONFLICTS WITH THE SETTLED PRACTICE OF EVERY OTHER CIRCUIT.

Prior to the decision of the panel of the Fifth Circuit below, virtually every Federal court to have passed upon the issue, including various Fifth Circuit panels, had applied the traditional rule, reflected in Rule 8(c) of the Federal Rules of Civil Procedure, that the persuasion burden on an affirmative good faith defense must be borne by the defendant. E.g., DeVasto v. Faherty, 658 F.2d 859, 865 (1st Cir. 1981); Bivens v. Six Unknown Agents, 456 F.2d 1339 (2d Cir. 1972) (on remand); Cruz v. Beto, 603 F.2d 1178, 1184 (5th Cir. 1979); Barker v. Norman, 651 F.2d 1107, 1120 (5th Cir. 1981); Williams v. Treen, 671 F.2d

892, 897 (5th Cir. 1982); Haislah v. Walton, 676 F.2d 208, 214-215 (6th Cir. 1982); Wolfel v. Sanborn, 666 F.2d 1005, 1007 (6th Cir. 1982); Landrum v. Moats, 576 F.2d 1320, 1329 (8th Cir.), cert. denied, 439 U.S. 912 (1978); Harris v. Rosenburg, 664 F.2d 1121, 1128 (9th Cir. 1981); Martin v. Duffie 463 F.2d 464, 468 (10th Cir. 1972). The panel of the Fifth Circuit below candidly acknowledged that its decision to place the persuasion burden on the good faith defense on the plaintiff was at variance with the settled practice of every other Circuit. 684 F.2d at 1163 n.14. The panel believed, however, that despite this Court's explicit reservation of the issue[8] and the wealth of contrary authority, it was

8. This Court has twice explicitly reserved the issue of the allocation of the persuasion burden on the issue of the good faith defense. Gomez v. Toledo, (Continued on following page)

bound by recent Fifth Circuit precedent placing the burden of persuasion on the issue on the plaintiff. Id. A writ of certiorari should issue to enable the Court to resolve this important conflict.

III. THE PANEL BELOW SERIOUSLY MISUNDERSTOOD THE COURT'S DECISION IN HARLOW v. FITZGERALD WHEN IT (1) IMPROPERLY ALLOCATED THE PERSUASION BURDEN ON THE AFFIRMATIVE GOOD FAITH DEFENSE TO THE PLAINTIFF AND (2) APPLIED A TEST OF QUALIFIED IMMUNITY APPLICABLE TO HIGH-RANKING OFFICIALS RATHER THAN THE GOOD FAITH DEFENSE APPLICABLE TO LOWER-RANKING EMPLOYEES SUCH AS POLICE OFFICERS.

A. The Burden of Persuasion Rests On The Defendants And They Plainly Failed To Carry It.

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446 U.S. 635, 642 (1980); Harlow v. Fitzgerald, ___ U.S. ___, 73 L.Ed. 2d 396 408 n.24 (1982). To the extent that this Court has spoken on the issue, it has implied that the persuasion burden must rest with the defendant. Dennis v. Sparks, 449 U.S. 24, 29 (1980) ("The burden is on the official claiming immunity to demonstrate the entitlement").

In Harlow, this Court modified the test for qualified immunity available to certain high ranking officials charged with policy making responsibility. The pre-Harlow test, established in Scheuer v. Rhodes, 416 U.S. 232 (1974) and Wood v. Strickland, 420 U.S. 308 (1975), had permitted an official to avoid liability for having violated the constitution by establishing, first, that he had reasonable grounds to believe that his action was lawful and, second, that he had acted in subjective good faith. Under such a test, a plaintiff could force a full trial on the merits by denying a defendant's protestation of good faith, even though reasonable grounds clearly existed for the defendant's mistaken belief that his actions were lawful. A majority of this Court held in Harlow that defendants asserting a

qualified immunity defense were entitled to prevail upon a showing that reasonable grounds existed for a belief -- albeit a mistaken one -- in the legality of their acts, without the necessity of demonstrating subjective good faith as well.

While Harlow modified the substantive content of the qualified immunity doctrine by relieving certain defendants from demonstrating subjective good faith, it did not purport to alter the burden of proof rules governing the "objective" determination of whether reasonable grounds existed for a mistaken belief in the legality of the defendant's acts. Indeed, the Court expressly reserved the issue. 73 L.Ed. 2d at 408 n.24.

Assuming arguendo that the Harlow test applies to the arrest of petitioner, it seems clear that Officer Garza had no reasonable basis for any belief that

probable cause existed to arrest petitioner in his own home for abusive language or public intoxication.[12] Thus, under Harlow, and Pierson v. Ray, supra, the District Court should have directed a verdict for petitioner. At a minimum, the case should

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12. As a matter of law, petitioner's words could not have justified his arrest. E.g., Gooding v. Wilson, 405 U.S. 519, 525 (1972); Lewis v. New Orleans, 415 U.S. 130 (1974). Thus, under precisely the "clearly established law" described by this Court in Harlow, Officer Garza could not reasonably have believed that probable cause existed to arrest petitioner under the abusive language statute. Tex. Pen. Code, § 42.01.

Similarly, Officer Garza flouted "clearly established law" when he arrested petitioner for public intoxication in his own front yard under a statute which plainly requires that the offense be committed "in a public place." Moreover, Officer Garza never offered any evidence tending to show that petitioner was a danger to himself or to others, as required by the Texas public intoxication statute. Tex. Pen. Code, § 42.08.

have been submitted to the jury pursuant to a charge which made it clear that the burden of persuasion on the question of whether a reasonable basis existed to believe that probable cause was present rested with the defendant. Harlow, therefore, provides no support whatever for the action of the panel of the Fifth Circuit below in shifting the persuasion burden to the plaintiff on the issue of "objective reasonableness" needed to establish a qualified immunity.[13]

B. Defendants were Entitled To Invoke Only The Good Faith Defense, Not Qualified Immunity.

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13. Even if one shifted the persuasion burden to the plaintiff on the existence of reasonable grounds to believe that probable cause existed, petitioner should have received a directed verdict on the issue, since there is no basis whatever to justify a finding of reasonable belief that probable cause existed.

More fundamentally, however, it is doubtful whether Harlow has any applicability to police abuse cases involving lower-ranking officials who have not traditionally been entitled to an immunity from suit, as opposed to a good faith defense. Indeed, the Court took pains in Scheuer v. Rhodes to emphasize that very distinction, which the Fifth Circuit has collapsed:

> When a court evaluates police conduct relating to an arrest its guideline is "good faith and probable cause"...in the case of higher officers of the executive branch, however, the inquiry is...

416 U.S. at 245-46. See also id. at 247-48.

The qualified immunity doctrine is designed to shield certain officials from judicial scrutiny in order to permit them to exercise policy-making functions free from the time-consuming and

potentially inhibitory duty of defending their judgments in court. In Harlow, this Court ruled that the time-consuming nature of the subjective prong of the then-existing test for qualified immunity was so onerous that it endangered the historical purpose of the immunity doctrine -- the shielding of certain officials from undue pre-occupation with explaining their actions in a judicial forum. Whatever the wisdom of such decision in the context of ranking Presidential aides, as in Harlow, or the Governor of a State, as in Scheuer, or the members of a school board, as in Wood, it has no application to allegations of police abuse by lower ranking members of a police force. Police officers have never been entitled to an immunity from judicial review -- qualified or

otherwise. No one has ever suggested that police officers should be excused from the "inconvenience" of fully explaining their activities in a court of law. Instead, they have been shielded from unfair liability for having effected an unlawful arrest, not by any doctrine of official immunity, but only by a good faith defense which requires either that a police officer have acted in good faith and with probable cause (see Point I, supra); or if Pierson has been expanded, that the police officer demonstrate reasonable grounds to found a good faith belief that probable cause existed. Unlike the immunity doctrine, which is designed to minimize judicial scrutiny over policy-making officials, the good faith defense is

designed to encourage painstaking judicial scrutiny of the conduct of ministerial personnel in order to determine whether to exonerate them from the consequences illegal activity. Thus, the determination in Harlow that time-consuming inquiry into the subjective mental state of a ranking official is inconsistent with the purpose of the immunity doctrine has little or no relevance to police abuse cases involving, not qualified immunity, but only the good faith defense.

In any event, whether the Harlow test is applied or whether it is deemed inapplicable to police abuse cases, Harlow provides no support for the panel's dramatic re-writing of the burden of proof rules in police abuse cases

and its consequent affirmance of the judgment in defendants' favor.[14]

The panel's decision removes any effective check on the use of retaliatory arrest to punish a person for challenging the propriety of a police officer's actions. If a person who has been unconstitutionally arrested must prove both that probable cause did not exist and that the police officer could not reasonably have believed that probable cause existed, the delicate mechanism which balances individual liberty against effective law enforcement will have been

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14. The cases cited by the Circuit to support its holding that defendants were entitled to the defense are all quite inapposite here. In all the cases cited by the Court of Appeals, there is either an intervening, insulating factor (a magistrate) protecting the official from liability, or substantial confusion as to the state of law at the time the aggrieved party was arrested.

seriously damaged. Given the extraordinary difficulty in satisfying such a persuasion burden, no effective deterrent to a retaliatory abuse of the arrest power would exist. On the other hand, requiring a defendant to establish at least a reasonable basis for a belief that probable cause existed places the persuasion burden on the party with access to the facts and properly deflects error in favor of the vindication and protection of constitutional rights.

IV. THIS COURT SHOULD EXTEND MUNICIPAL LIABILITY FOR DAMAGES TO THOSE WHOSE RIGHTS ARE VIOLATED BY OFFICIALS PROTECTED BY QUALIFIED IMMUNITY OR THE GOOD FAITH DEFENSE.

A principal policy consideration in the partial elimination of municipal immunity by Monell v. Department of

Social Services, 436 U.S. 658 (1978)[15], and the denial of a good faith defense to municipalities by Owen v. City of Independence, 445 U.S. 622 (1980), was to assure compensation to victims of civil rights violations. That public policy is defeated, however, in those situations where the Monell doctrine does not presently permit a cause of action against a municipal body whose employees have violated constitutional rights and a public official such as Garza is shielded by qualified immunity or a good faith defense. In addition, of course, the scope of immunity afforded

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15. 42 U.S.C. § 1983 was "intended to give a broad remedy for violations of federally protected rights." Monell, 436 U.S. at 685 (footnote omitted).

by Monell and the judgment below is in irreconciliable tension with the fundamental principle announced by Chief Justice Marshall in Marbury v. Madison, that "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury." 1 Cranch 137, 163 (1803) (emphasis added).[16]

To resolve such dilemmas, this Court should hold that municipalities are liable under 42 U.S.C. § 1983 for damages suffered by persons whose rights are violated by officials but who

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16. The Chief Justice continued

> In Great Britain the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court....The government

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are shielded from judgment by qualified immunity or a good faith defense. Otherwise, "many victims of...malfeasance would be left remediless." Owen v. Independence, 445 U.S. at 651.

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> of the United States has been emphatically termed a government of laws, not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. 1 Cr. at 163.

CONCLUSION

Wherefore, Petitioner prays that this Court issue a writ of certiorari to the Fifth Circuit Court of Appeals or, in the alternative, reverse the Court of Appeals summarily, on the ground that Petitioner is entitled to judgment as a matter of law.

Respectfully submitted,

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